

DISCUSSION OF THE AMENDMENT

Claims 1, 11, 17 and 22-45 are active in the present application. Independent Claims 1 and 23 are amended herein to include the limitations of previously pending Claim 4. Claims 35-45 are new claims. Support for new Claims 37-41 is found in the Examples on page 47 and in paragraphs [0085]-[0086] of the PG publication corresponding with the present application (i.e., U.S. 2006/0140891). Support for new Claims 35 and 36 is found on page 36. Support for new Claims 42-45 is found on page 9.

No new matter is believed to have been added by this amendment.

REMARKS

Applicants thank Examiner Mercier and the Examiner's Supervisor Mr. Kishore for the helpful and courteous discussion of April 1, 2008. Independent Claims 1 and 23 are amended herein to include the limitations of previously pending Claim 4 (i.e., to define the particle size of the polymer particles).

The specification discloses the following with respect to the importance of particle size:

When the water-absorbing polymer particles used in the present invention are in the form of sphere, egg or lump, the average particle diameter thereof is preferably 0.1 μm or more, more preferably 0.5 μm or more, and the upper limit is preferably 50 μm or less, more preferably 20 μm or less, still more preferably 10 μm or less and even more preferably 5 μm or less, so that the resulting cosmetics are not remarkable as white powder, do not cause a sense of incongruity after absorption of water, have dry feel, and are not easily removed from the skin. The average particle diameter refers to the diameter of a particle not swollen with water, determined (in a cyclohexane solvent) with a light scattering particle-diameter measuring instrument (for example, LS-230 model manufactured by Coulter, Inc.).

See the paragraph bridging pages 3 and 4 of the specification.

Applicants submit that the prior art relied on by the Office (see below) does not disclose or suggest that certain advantages such as those described in the above-quoted paragraph from the present specification may be obtained in compositions such as that presently claimed.

The Office is of the opinion that previously presented Claim 1 is rendered obvious by Masashi (AU 25757/95). Applicants point out that Masashi does not disclose any composition containing an antiperspirant. Applicants submit that because Masashi does not disclose or suggest all of the present claim limitations, the presently-claimed invention cannot be obvious over Masashi.

The Office Action includes a citation to Shin (U.S. 4,937,069) but it is unclear whether the Office has combined Masashi and Shin in the rejection of previously presented Claim 1. Notwithstanding the lack of clarity of the Office Action, Applicants submit that the Office failed to establish a *prima facie* case of obviousness at least because there is no basis for combining Masashi and Shin.

In fact, Masashi discloses the use of absorptive polymer particles in a diaper, not a cosmetic composition. Masashi discloses the use of inorganic compounds such as zeolite etc. which are different from the anti-perspiring component recited in the present claims. Shin, on the other hand, discloses an anhydrous semi-solid antiperspirant suspension. Applicants submit that it makes no sense to assert that one of skill in the art would turn to the teachings of the anhydrous semi-solid antiperspirant suspension as guidance for modifying a diaper. Thus, there would be no expectation of success and no motivation to combine the references.

Masashi discloses water-absorbent resin particles (see the title of Masashi). Masashi does not include any mention or reference any antiperspirant. The Masashi particles have a particle size of 10-1,000 μm , preferably 50-850 μm whereas the presently claimed invention recites a particle size of from 0.1 to 50 μm (see the paragraph bridging pages 9 and 10 of Masashi). Masashi even discloses:

“... particles having a smaller particle size tend to form lumps at the time of water absorption to deteriorate the water absorption rate, ...”

See page 9, lines 2-4 of Masashi.

Applicants draw the Office's attention to new Claims 42-45 which recite hydrophobic particles having a particle size outside the range of particle size disclosed in Masashi.

Likewise, Shin does not include any reference or suggestion to water absorbent polymer particles. Further, Shin's cyclomethicone is not a silicone having a functional group

and thus does not suggest the surface-hydrophobated water-absorbing polymer particles coated thereon with a silicone compound having at least one kind of functional group.

In the absence of any motivation to combine the references, the Office's rejection is not supportable and should be withdrawn.

The Office further rejected the claims for obviousness-type double patenting in view of co-pending 10/137,405. Applicants note that the co-pending application is presently under appeal. A copy of the claims of the Appeal Brief filed on July 2, 2007 is attached for reference.

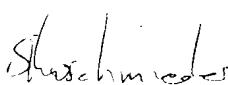
The claims of the co-pending application are drawn to a silicone-modified water-absorbing polymer particle (see Claim 8) and a cosmetic composition comprising the particle (see Claim 24). Applicants submit that the subject matter of the present claims (e.g., drawn to compositions that are in the form of a stick antiperspirant or which contain a major amount of a silicone) should not be rejected for obviousness-type double patenting over the co-pending application. The claims of the co-pending application are drawn to a particle or a composition. Nowhere in the claims of the co-pending application is a composition in the form of a stick antiperspirant or in the form of a composition comprising a major amount of silicone disclosed therefore the present claims should be allowed over the co-pending claims.

For the reasons discussed above in detail, Applicants respectfully request withdrawal of the rejections and the passage of all now-pending claims to allowance.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.
Norman F. Oblon

Customer Number
22850
Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 08/07)



Stefan U. Koschmieder, Ph.D.
Registration No. 50,238